**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2520 of 2007**
**With**
**FIRST APPEAL No. 2517 of 2007**
**With**
**CIVIL APPLICATION No. 7365 of 2007**
**In**
**FIRST APPEAL No. 2520 of 2007**
**With**
**CIVIL APPLICATION No. 7675 of 2007**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NEW INDIA ASSURANCE CO. LTD. - Appellant(s)**
**Versus**
**BABUBHA BHARABHA GIGLA & 3 - Defendant(s)**

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**Appearance :**
MR HASMUKH THAKKER for Appellant(s) : 1,
None for Defendant(s) : 1,3 - 4.
RULE SERVED BY DS for Defendant(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 20/06/2007**

**COMMON ORAL JUDGMENT**

1. ***Admit***.

2. So far as First Appeal Nos. 2520 of 2007 and 2517 of 2007 are concerned, Shri U.T.Mishra, learned advocate waives service of notice of admission on behalf of the original claimant. Similarly, Shri A.H.Desai, learned advocate waives service of notice of admission on behalf of respondent Nos.2 and 4 so far as First Appeal No. 2520 of 2007 is concerned. Shri Hasmukh Thakker, learned advocate appearing for the appellant seeks permission to delete the respondent No.3. Similarly, Shri Hasmukh Thakker, learned advocate waives service of notice of admission on behalf of the respondent No.4 – Insurance Company in First Appeal No. 2517 of 2007 and Shri U.T.Mistra, learned advocate waives service of notice of admission on behalf of the respondent No.1 in First Appeal No. 2517 of 2007. Shri Sejpal, learned advocate waives service of notice of admission on behalf of the respondent No.2 of First Appeal No. 2517 of 2007. With the consent of the learned advocates appearing for the respective parties,

both these appeals are taken up for final hearing today as there is broad consensus between the parties.

3. By judgment and order passed by the learned Commissioner for Workmen Compensation, Jamnagar dated 2.8.2006 passed in Workmen Compensation (Non-Fatal) Case No. 5 of 1999, the learned Commissioner for Workmen Compensation has directed the concerned respondents to pay Rs.1,92,213/- to the original claimant by way of compensation along with 8% interest w.e.f. 4.2.1999 and has also further passed an order directing the original respondent Nos.1 to 3 to pay Rs.96,106/- being 50% of the amount of compensation towards the penalty to the original claimant. The impugned judgment and order has been challenged by the respective appellants in First Appeal Nos. 2520 of 2007 and 2517 of 2007.

4. It is the contention on behalf of the Insurance Company that so far as the Insurance Company is concerned, they cannot be held liable to pay any compensation as pursuant to the settlement

arrived at between the Insurance Company and one M/s. Shah Trading Corporation and Tata Chemicals Limited, the Insurance Company has paid an amount of Rs. 5 Lacs to M/s. Shah Trading Corporation towards the compensation payable to the original claimant herein and legal heirs of one Juma Husein. The said compromise settlement was arrived at in Special Civil Suit No. 29 of 2001 filed before the learned Civil Court, Rajkot. Shri Desai, learned advocate appearing for the appellant in First Appeal No. 2517 of 2007 has submitted that it is not disputed that M/s. Shah Trading Corporation has not received an amount of Rs. 5 Lacs from the Insurance Company towards the compensation payable to the original claimant herein as well as the heirs and legal representatives of deceased Juma Husein. He has also further submitted that so far as the heirs and legal representatives of deceased Juma Husein are concerned, M/s. Shah Trading Corporation has already paid an amount of Rs.2,04,000/- to be payable to the heirs of deceased Juma Hussein. However, he has submitted that at the time of accident, M/s. Shah Trading Corporation has incurred the expenses of Rs.

2,59,770.16 ps. towards the treatment of the claimant herein and they have also paid an amount of Rs.24,347/- towards the half monthly basis and the same may be adjusted. In view of the fact that the Insurance Company has already paid an amount of Rs. 5 Lacs to M/s. Shah Trading Corporation pursuant to the settlement arrived at in Special Civil Suit No. 29 of 2001 towards the compensation payable to the original claimant herein and legal heirs and representatives of deceased Juma Husein and out of which Rs. 2,04,000/- is paid to the heirs of the deceased Juma Husein, balance amount of Rs. 2,96,000/- is lying with M/s. Shah Trading Corporation and therefore, the same is required to be paid to the original claimant herein – Babubha Bharabha Gigala and the said cannot be retained by M/s. Shah Trading Corporation. Under the circumstances, Shri Desai, learned advocate appearing for the appellant in First Appeal No. 2517 of 2007 as well as Shri Sejpal, learned advocate appearing for M/s. Shah Trading Corporation have jointly submitted that without entering into further controversy, they have no objection, if towards full and final settlement

of the claim of Shri Babubha Bharabha Gigala and in full satisfaction of the order passed by the learned Commissioner for Workmen Compensation passed in Workmen Compensation (Non-Fatal) Case No. 5 of 1999, if original claimant is paid Rs. 2,96,000/- and the same may be paid by M/s. Shah Trading Corporation and the judgment and order passed by the learned Commissioner for Workmen Compensation be modified to that extent. Shri U.T.Mishra, learned advocate appearing for the original claimant – Bababha Bharabha Gigala has fairly submitted and has made a statement that the original claimant would be satisfied, if he is paid an amount of Rs. 2,96,000/- by said M/s. Shah Trading Corporation towards his claim of compensation in Workmen Compensation (Non-Fatal) Case No. 5 of 1999 and the judgment and order passed by the learned Commissioner for Workmen Compensation is modified to that extent.

5. Under the circumstances and in view of the above broad consensus between the parties, the judgment and order passed by the learned Commissioner for Workmen Compensation, Jamnagar

dated 2.8.2006 passed in Workmen Compensation (Non–Fatal) Case No. 5 of 1999 is hereby modified to the extent that the original claimant shall be entitled to in all of Rs. 2,96,000/- payable by M/s. Shah Trading Corporation and/or Coal Carriers. Accordingly, M/s. Shah Trading Corporation/Coal Carriers are directed to deposit the balance amount of Rs. 1,93,768/- with the learned Commissioner for Workmen Compensation, Jamnagar within a period of two weeks from today. On such deposit, the learned Commissioner for Workmen Compensation, Jamnagar is directed to invest an amount of Rs. 2,50,000/- in the Fixed Deposit in any Nationalized Bank in the name of the original claimant for a period of five years and that the original claimant shall be entitled to withdraw the periodical interest on the said amount and that there shall not be any loan, lien and/or advance on the said Fixed Deposit without the prior permission of this Court. So far as balance amount of Rs. 46,000/- is concerned, the learned Commissioner for Workmen Compensation, Jamnagar is directed to pay the said amount to the original claimant by way of Account Payee

Cheque. The judgment and order passed by the learned Commissioner for Workmen Compensation, Jamnagar passed in Workmen Compensation (Non-Fatal) Case No. 5 of 1999 is hereby modified to the aforesaid extent. It goes without saying that on modification of the judgment and order passed by the learned Commissioner for Workmen Compensation, Jamnagar dated 2.8.2006 passed in Workmen Compensation (Non-Fatal) Case No. 5 of 1999, as stated hereinabove, the Insurance Company shall be entitled to withdraw the entire amount, which is deposited by them i.e. Rs. 2,81,231/-. Both these appeals are allowed accordingly to the aforesaid extent, however, there shall be no order as to costs.

Direct Service is permitted.

6. In view of the disposal of main First Appeals, no orders in Civil Applications.

[ M.R.Shah, J.]

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